



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1994

Mr. William D. Dugat, III  
Law Offices of Bickerstaff, Heath & Smiley  
San Jacinto Center, Suite 1800  
98 San Jacinto Boulevard  
Austin, Texas 78701-4039

OR94-161

Dear Mr. Dugat:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).<sup>1</sup> Your request was assigned ID# 23257.

The Barton Springs/Edwards Aquifer Conservation District received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.103(a) of the Government Code (former section 3(a)(3), V.T.C.S. article 6252-17a). To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). We have determined in prior rulings of this office that a pending complaint before the Equal Employment Opportunity Commission ("EEOC") indicates a substantial likelihood of potential litigation. Open Records Decision Nos. 386 (1983); 336 (1982). It is clear from the records submitted for our review that an EEOC complaint has been filed and that the requested records relate to the complaint. In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld.

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<sup>1</sup>We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/JCH/rho

Ref.: ID# 23257

Enclosure: Submitted documents

cc: Mr. Chand Wije, Ph.D.  
12800 B. Tomanet Trail  
Austin, Texas 78727  
(w/o enclosures)